

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-7005

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-7005

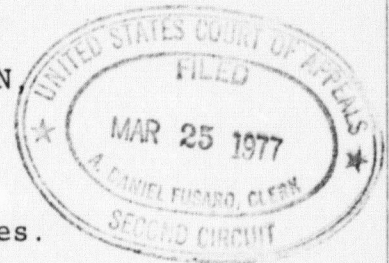
PRESCOTT H. RATHBORNE,

Plaintiff-Appellant,

-against-

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC., SILTAN
DEVELOPMENT CORP., WOAS PROPERTIES
CORP. and MADISON ASSOCIATES,

Defendants-Appellees.



BRIEF ON BEHALF OF DEFENDANTS-
APPELLEES, CITADEL MANAGEMENT
CO., INC. AND URBAN RELOCATION
CO., INC.

TURCHIN & TOPPER
Attorneys for Defendants-
Appellees
60 East 42nd Street
New York, New York 10017

TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE.....	2
ARGUMENT.....	3
CONCLUSION.....	3

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-7005

-----X
PRESCOTT H. RATHBORNE,

Plaintiff-Appellant,

-against-

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC., SILTAN
DEVELOPMENT CORP., WOAS PROPERTIES CORP.
and MADISON ASSOCIATES,

Defendants-Appellees.
-----X

BRIEF ON BEHALF OF APPELLEES,
CITADEL MANAGEMENT CO., INC. AND
URBAN RELOCATION CO., INC.

PRELIMINARY STATEMENT

Appellant Rathborne appeals from the dismissal of his
action in the United States District Court for the Southern District of
New York (Brieant, D.J.), pursuant to Rule 56 F. R. Civ. P. (A.3-13).^{*}
This brief is submitted on behalf of appellees, Citadel Management Co.,
Inc. (hereinafter referred to as "Citadel") and Urban Relocation Co.,
Inc. (hereinafter referred to as "Urban").

^{*}/ Page references are to the Appendix.

STATEMENT OF THE CASE

The statement of the case, including the facts, are fully set forth in the brief submitted by Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, attorneys for the so-called Madison appellees. In brief outline, the Madison appellees were engaged in assembling real estate for future redevelopment in the Borough of Manhattan in the block encompassed by East 52nd and East 53rd Streets, and Second and Third Avenues. Appellant occupied an apartment in 200 53rd Street, one of the buildings located within the area described (A.39,142). Urban and Citadel, were retained by the Madison appellees to manage the properties as they were acquired and to assist in the relocation of the tenants (A.42). However, it is undisputed that neither Citadel nor Urban had any contact whatsoever with appellant. The building in which appellant resided was subject to a long-term net lease held by an unrelated corporation, not in this case at all. Therefore, Citadel had no active management duties in regard to appellant's particular building, its sole function being to collect from the lessee a monthly rent check and Urban made no effort to relocate any of the tenants in that building (A.207, 42,43,15; Appellant's Brief p.10).

The amended complaint alleges various acts done by appellees which appellant concedes in his brief are "legal in themselves" (Appellant's Brief p.3) but which he says constituted harrassment that drove him from his apartment. The District Court granted summary judgment on two grounds. First, appellant offered not a single fact to support his charge of harrassment. Second, his exclusive remedy in any event, was the administrative proceeding provided under the New York Rent Control Laws (A.8) in view of his status as a statutory

tenant. We urge that the lower Court properly granted summary judgment on both grounds.

ARGUMENT

The brief submitted on behalf of the Madison appellees fully sets forth the law applicable to this appeal and therefore, to avoid duplication, we ask that it be deemed submitted on behalf of Citadel and Urban.

CONCLUSION

For the reasons set forth therein, it is submitted that the order of the District Court granting summary judgment should be affirmed.

Respectfully submitted,

TURCHIN & TOPPER
Attorneys for Appellees
Citadel Management Co. Inc.
and Urban Relocation Co., Inc.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK ^)

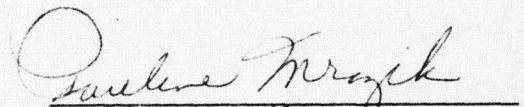
ss.:

COUNTY OF NEW YORK)

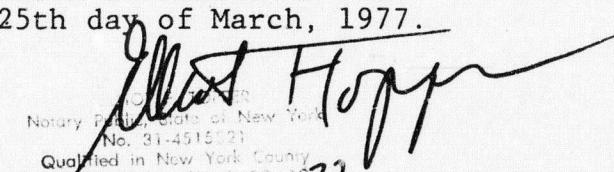
Pauline Mrazik, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at Monroe, New York.

On March 25, 1977, deponent served the within Brief upon Bradley B. Davis, attorney for appellant, at 1235 Park Avenue, New York, New York 10028 and upon Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, Esqs., attorneys for defendants-appellees, Glickman, Salbian, Siltan and Madison, at 919 Third Avenue, New York, New York 10022, the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Pauline Mrazik

Sworn to before me this
25th day of March, 1977.


Notary Public, State of New York
No. 31-451521
Qualified in New York County
Commission Expires March 30, 1977